

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

KENJI HALEY, #M-21363

Plaintiff,

vs.

WEXFORD HEALTH SOURCES, INC.,

RAVYN OLIN, and

ALAN MONTGOMERY,

Defendants.

Case No. 15-cv-00473-JPG

MEMORANDUM AND ORDER

GILBERT, District Judge:

Plaintiff has filed a motion for reconsideration pursuant to Fed. R. Civ. P. 60(b). *See* Doc. 14. Plaintiff has also filed a Notice of Appeal. *See* Doc. 16. Pursuant to Circuit Rule 57, the Court certifies that it would be inclined to grant relief pursuant to Rule 60(b) and allow Plaintiff to proceed with his case if the Court of Appeals were to remand the case. The Clerk is directed to send a copy of this order to the PLRA Attorney, United States Court of Appeals for the Seventh Circuit.

PROCEDURAL BACKGROUND

In an order dated May 27, 2015, the Court dismissed Plaintiff's case with prejudice for failure to state a claim. *See* Doc. 12. Plaintiff's complaint alleged that Defendants had been deliberately indifferent to Plaintiff's serious medical needs when on a single occasion they carelessly prescribed him a medication that he had a documented allergy to. *Id.* In his motion to reconsider, Plaintiff asserts that he was stymied in his attempts to gain access to his legal

documents – documents which he contends support his claim of deliberate indifference – and that the delay prejudiced his case. The Court remains skeptical that Plaintiff has a colorable civil rights claim against Defendants, but out of an abundance of caution, the Court is inclined to grant Plaintiff's motion for reconsideration and allow him an additional 28 days to file an amended complaint. Even when an appeal is pending, the district court retains jurisdiction to deny a Rule 60(b) motion, or, if the Court is inclined to grant relief, to so indicate so that the Court of Appeals can order a prompt remand. *See Craig v. Ontario Corp.*, 543 F.3d 872, 875 (7th Cir. 2008); Circuit Rule 57.

Accordingly, the Court certifies that if the Court of Appeals were to remand the case, it would be inclined to grant Plaintiff's Rule 60(b) motion and his request to file an amended complaint.

IT IS SO ORDERED.

DATED: July 30, 2015

s/J. Phil Gilbert
United States District Judge